

## **5 OFFICIAL OPINIONS OF THE COMPLIANCE BOARD 98 (2007)**

### **CLOSED SESSION PROCEDURES – WRITTEN STATEMENT – FAILURE TO PREPARE, HELD TO BE A VIOLATION – MINUTES – BROKEN TAPE RECORDER DOES NOT EXCUSE COMPLIANCE WITH OBLIGATION TO PREPARE MINUTES – FAILURE TO PREPARE CLOSED SESSION SUMMARY, HELD TO BE A VIOLATION**

January 18, 2007

*Ms. Rebecca Mann*

The Open Meetings Compliance Board has considered your complaint alleging that the Chesapeake City Town Council violated the Open Meetings Act in connection with closed meetings on August 7 and 28, 2006. The complaint raised issues about notice of the meetings, the Act's procedural requirements for closing the meetings, and the Act's requirement regarding minutes. The complaint, however, did not allege that the topics of discussion were impermissible for closed sessions.

For the reasons explained below, we conclude that the Town Council violated the Open Meetings Act by closing its meetings on August 7 and 28, 2006, without completing a written statement as required by the Act, by failing to keep minutes of these closed sessions, and by failing to provide certain required information in its publicly available minutes issued after the closed sessions. We are unable to render an opinion about the adequacy of notice of the meetings.

## **I**

### **Complaint and Response**

#### ***A. Notice***

The complainant asserted that she saw no advance notice of the closed sessions held before open sessions on the two dates, in violation of §10-506 of the Act.<sup>1</sup> In a timely response on behalf of the Town, Keith A. Baynes, Esquire, stated

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<sup>1</sup> All statutory references are to the Open Meetings Act, Title 10, Subtitle 5, Annotated Code of Maryland.

that notice of the closed session on August 7 “was listed on the Town Agenda for such meeting.” No mention is made of notice of the closed sessions on August 28, however, nor did the response supply a copy of the notice.<sup>2</sup>

***B. Closing Procedures***

The complaint alleged that no written statement of a vote to close the meetings on August 7 and 28 was prepared. The response, while insisting that a proper motion and vote to close took place on both dates, neither supplied written statements prepared in advance of the closed sessions nor claimed that such statements had been prepared.

***C. Minutes***

The complaint suggested that no minutes of the closed sessions were prepared. While the response provided copies of the open session minutes for the two dates, it neither provided copies of closed session minutes nor indicated that they had been prepared. With respect to the second closed session on August 28, the response noted that the tape recorder had malfunctioned.

In addition, the complaint alleged that the Town Council had not included the information about the closed sessions required by the Act to be in open meeting minutes. The response did not address this point.

**II**

**Analysis**

***A. Notice***

The Open Meetings Act requires “reasonable advance notice” of a meeting. §10-506(a). No specific interval between notice of a meeting and the holding of the meeting is required. Notice given promptly after the scheduling of a meeting is reasonable in its timing, even if the meeting will occur soon thereafter. *See 1 OMCB Opinions* 56 (1994) (Opinion 94-1). Notice can be accomplished by any of several specified means, including public posting. A notice need only contain the date, time, and place of a meeting and, “if appropriate, ... a statement that all or part of a meeting may be conducted in closed session.” §10-506(b)(3).

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<sup>2</sup> According to the response, two closed sessions took place on August 28, one before the open session and one afterwards.

The Town could have enabled us to decide whether proper notice was given had it provided us with copies of the notices and information on where and when they were posted. *See* § 10-502.5(c)(2)(ii).<sup>3</sup> It did not do so. Based on the limited record before us, we cannot decide this point. *See* §10-502.5(f)(2).

***B. Closing Procedures***

Before a public body closes a session under the Open Meetings Act, certain procedural requirements must be followed. First, there must be a vote in public, to establish that a majority of the members of the public body supports closing the session. §10-508(d)(1) and (2)(I). Based on the Town’s response, we find that this requirement was satisfied.

By itself, however, a vote to close a meeting is not enough to comply with the Act. The Act also requires the presiding officer to “make a written statement of the reason for closing a meeting, including a citation of the authority under the section, and a listing of the topics to be discussed.” §10-508(d)(2)(ii). As we previously explained, “[t]he apparent legislative objective is to allow those in attendance to make a rough judgment whether the topic of discussion actually fits within the exception.” 4 *OMCB Opinions* 142, 145 (2005). A properly done written statement also allows “an interested observer [to] compare what is said in the written statement preceding the meeting with what is said in the minutes summarizing the actual conduct of the meeting, and infer whether the public body hewed to the topic that justified the closing.” 4 *OMCB Opinions* 46, 49 (2004).

The Town’s response in effect acknowledged that the statements were not prepared. Hence, the Act was violated.

***C. Minutes***

Minutes must be kept of both open and closed sessions. § 10-509(b). In addition, following a closed session, the Act requires that a public body reveal certain information in its publicly-available minutes:

If a public body meets in closed session, the minutes for its next open session shall include:

(I) a statement of the time, place, and purpose of the closed session;

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<sup>3</sup> In submitting the complaint to the Town for its response, we specifically requested that it include with its response “any material that might be relevant to the Compliance Board’s review of the complaint.”

- (ii) a record of the vote of each member as to closing the meeting;
- (iii) a citation of the authority under this subtitle for closing the session; and
- (iv) a listing of the topics of discussion, persons present, and each action taken during the session.

There is no indication from the Town's response that minutes of the closed sessions were kept or that the required disclosure about the closed sessions was made in publicly available minutes. A broken tape recorder does not excuse compliance with the Act's requirements on minutes. *See generally 4 OMCB Opinions 24, 26 (2004).*

### **III**

#### **Conclusion**

The Chesapeake City Town Council violated the Open Meetings Act when it closed its meetings on August 7 and 28, 2006, without completing a written statement as required by the Act. A second violation in connection with these closed sessions was the failure to comply with the Act's requirements about minutes. We express no opinion whether notice of these meetings was adequate.

OPEN MEETINGS COMPLIANCE BOARD

*Walter Sondheim, Jr.*  
*Courtney J. McKeldin*  
*Tyler G. Webb*